

HONORABLE MARC L. BARRECA  
CHAPTER 13  
HEARING DATE: JUNE 23, 2021  
HEARING TIME: 9 AM  
HEARING LOCATION: TELEPHONE  
RESPONSE DATE: JUNE 16, 2021

U.S. BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON

In re:

RONALD E. HOWELL and DEE L  
SHISHIDO,

Debtors,

Bankruptcy Case #: 15-15924-MLB

MOTION TO STRIKE MOTION  
TO VACATE DEFAULT AND  
RESPONSE TO MOTION TO  
VACATE DEFAULT ORDER  
AGAINST NAVIENT

I. SUMMARY OF ARGUMENT

A. The motion should be stricken for lack of supporting evidence.

Navient Solutions LLC (hereafter NS LLC) and Navient Corporation (hereafter Navient) fail to submit any supporting evidence for their motion. They allege improper notice without establishing or asserting lack of actual notice, nor of what internal actions led to its failure to respond five times. As discussed below, it is incumbent that such evidence be presented to the court in some form, usually by sworn declaration or affidavit. Without such supporting evidence here, the motion should be stricken in its entirety.

B. The motion should be denied on the merits

The 60(b)(4) motion should be denied because the court has had jurisdiction over NS LLC/Navient since it filed its creditor claims. Further, service on the Navient CEO

1 complies with the service rule for both NS LLC and Navient. Further still, NS LLC/Navient  
2 has failed to show, on any basis, that it did not actually receive the five notices sent by the  
3 debtors, including the fourth notice directed to the Navient Corporation CEO. The motion  
4 under 60(b)(1) is invalid; there is no mistake of law. NS LLC/Navient failed to credit  
5 payments under 11 USC 524(i). NS LLC/Navient presents no evidence to show it was not  
6 paid for debts at issue. The order of default is valid and should be affirmed.

## 7 II. SUPPLEMENTAL FACTS/FACTUAL OBSERVATIONS

### 8 A. The court has jurisdiction over NS LLC from its claim filing *and* Navient Corporation LLC as its principal.

9 Because NS LLC had already submitted its claims to the court, the court already  
10 had jurisdiction over it. *Katchen v. Lady*, 382 U.S. 323, 334-35 (1966)(by presenting claim  
11 respondents submitted themselves to all the consequences that attach to an appearance).  
12 Similarly, as discussed below, because NS LLC was an agent of Navient Corporation, it  
13 too should be treated as being under the jurisdiction of the court, generally speaking.

### 14 B. NS LLC is a wholly owned subsidiary of Navient Corporation; both are involved in making student loans and collecting on them.

15 NS LLC is a wholly owned subsidiary of Navient Corporation; the following  
16 appears on the NS LLC website home page:  
17

18  
19 © 2021 Navient Solutions, LLC (NMLS #212430). All rights reserved.

20 Navient and the Navient logo are registered service marks of Navient Solutions, LLC. Navient Corporation and its subsidiaries, including Navient Solutions, LLC, are not sponsored by or agencies of the United States of America.  
21  
22

1 NS LLC is an agent of Navient Corporation. The business of both is the making of  
2 student loans and securing their repayment.

3 **C. The debtors provided five separate notices to Navient: four to NS LLC and a**  
4 **fifth to Navient Corporation incorporating the first four, which was sent**  
**directly to the CEO, per direction of this court.**

5 NS LLC/Navient received five separate notices of these proceedings, culminating  
6 in the final one mailed directly to its CEO in Delaware. Here the court should note that the  
7 first notice was sent to NS LLC at two post office boxes: a general P.O. Box in Wilkes  
8 Barre, number 9500, but also to the Bankruptcy Litigation Unit E3149 at P.O. Box 9430,  
9 also in Wilkes Barre. Significantly, the fifth notice sent to the Navient CEO incorporated  
10 the four prior ones that had been mailed to NS LLC at the P.O. boxes.

11 **D. NS LLC and Navient Corporation received all five notices**

12 The five notices were all duly delivered; none were returned. Similarly, there is no  
13 declaration or affidavit from any person at NS LLC/ Navient stating that any of them were  
14 not received.

15 **E. NS LLC /Navient simply failed to respond to the five notices.**

16 There is no explanation in the record anywhere of why both NS LLC and its parent  
17 Navient Corporation completely failed to respond in any manner.

18 **F. NS LLC/Navient received payment for the loans at issue from the trustee.**

19 Similarly, the motion does not allege, anywhere, that it has not been paid for the  
20 debtor's loans through the plan and the trustee.

1 **G. NS LLC /Navient issued the statements and notices that violated the statute,**  
2 **including voice messages and text messages; they jointly participated in**  
3 **servicing the loans at issue.**

4 NS LLC/Navient never denies that it did commit acts which would otherwise be  
5 in violation of the statute. It cannot. All communications to the debtor were identified as  
6 coming from “Navient.”

7 **NAVIENT.**  
P.O. BOX 9500 WILKES-BARRE, PA 18773-9500

8 CXPR0008-202009 00015617 002978 006313 1/4 000000 319335 12635-12642  
DEE L. SHISHIDO  
31707 W. LAKE KETCHU  
M ROAD  
STANWOOD WA 98292-9709

Navient.com  
Convenience with a click

- Enroll in Auto Pay
- View Loan Information
- View Payment History
- View Frequently Asked Questions
- Make a One-Time Payment

You have \$229.78 due 10/07/20.

Detach along perforation and return with your payment or go to Navient.com to make an electronic payment

Account Number	591-1
Total Payment Due	\$229.78
See above for dates and Late Fees that apply	

Navient  
P.O. BOX 9533  
WILKES-BARRE, PA 18773-9533

Total Amount Enclosed \$

Make checks payable to Navient  
(U.S. Currency only - Do not send cash)

Changed your address or phone number?  
Please visit Navient.com to update your information.

Exhibit 9

15 Prior to the muted suspension of collection efforts for the debtors following NS  
16 LLC/Navient’s decision to respond to these proceedings in April of 2021, debtors received  
17 voice mails and texts from “Navient.” *Dec. D. Shishido.*

18 **H. NS LLC/Navient suspended collection efforts following its recognition of this**  
19 **litigation.**

20 Following NS LLC/Navient’s realization and awareness of this litigation, it  
21 suspended – somewhat – collection efforts. The regular phone calls and text messages  
22 stopped, although most recently debtors did receive another collection letter from  
23 “Navient.” *Dec. D. Shishido.*

24 DEBTORS REPLY TO NAVIENT MOTION  
TO VACATE JUDGMENT OF CONTEMPT  
4 of 12.

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360-755-1000

1 **I. Navient Corporation is the holder of the note.**

2 NS LLC/Navient asserts that Navient Corporation “does not service any student  
3 loans in any fashion.” Still, the note in this matter is held by Navient Corporation.

4 **J. NS LLC/Navient missed the appeal deadline.**

5 NS LLC/Navient had 14 days to file an appeal of the court’s order. More than 14  
6 days elapsed after the default judgment was entered without any appeal being filed.

7 **III. ARGUMENT ON MERITS**

8 **A. NS LLC and Navient Corporation should be treated as the same entity.**

9 The motion’s central premise is that NS LLC and Navient Corporation should be  
10 treated separately, especially when analyzing sufficiency of process. That is a slippery slope,  
11 as they are ultimately attached at the hip. Navient Corporation is the parent of NS LLC; NS  
12 LLC is the fully owned subsidiary of Navient Corporation. The primary business of both  
13 concerns making and collecting student loans. Account statements do not mention NS LLC,  
14 but are labeled as being from “Navient.” Even before this court, they have in briefing through  
15 single counsel deemed themselves collectively to be “Navient.” Debtors are required to make  
16 payment to “Navient.” Debtors here have received phone calls, phone messages and texts  
17 from “Navient.” The notion that they should be bifurcated is an artifice.

18 **B. The court had jurisdiction over both NS LLC and Navient Corporation; the  
19 default judgment/order is not void under 60(b)(4).**

20 **1. NS LLC filed the claims originally; it is the agent of Navient Corp.**

21 This court gained personal jurisdiction over NS LLC, according to the U.S. Supreme  
22 Court, when NS LLC filed its claims with this court. Further, as it is and was unquestionably

1 an agent for Navient Corporation, this court should conclude as a matter of law that there  
2 was jurisdiction over it by agency and proxy.

3 **2. The service made upon the CEO binds both NS LLC and Navient**  
4 **Corp.**

5 This court previously found that service by mail on the CEO of Navient Corporation  
6 would be deemed to be sufficient for purposes of imposing contempt. NS LLC and Navient  
7 Corporation take the position that it should not be. A defendant seeking relief from a default  
8 judgment on the basis of insufficiency or service by U.S. mail must (1) rebut the presumption  
9 of receipt and establish that it did not receive the process sent to it; (2) establish that failure  
10 to receive the process was not the result of its own fault; and (3) show a meritorious defense  
11 to the complaint against it. *In re Olympia Holding Corp.*, 230 B.R. 623, 43 Fed. R. Serv. 3d  
12 44 (Bankr. M.D. Fla. (1999)).

13 **3. Neither NS LLC nor Navient provide any evidence of why all the**  
14 **notices, though received, were ignored.**

15 Historically, typically, and traditionally, a party seeking to avoid a default judgment  
16 presents its argument in the first instance by explaining, by sworn testimony, the  
17 circumstances related to its failure to appear and defend. Two cases cited by NS LLC/Navient  
18 illustrate this principle. *Cordero v. AT&T*, No. 15CV5601RRMST, 2017 WL52591  
19 (2017)(declarations from AT&T employees); *Meer-Weis v. Kroger Co.*, 18CV1001  
20 (2019)(declarations from Kroger employees). Here there is no evidence submitted by NS  
21 LLC/Navient to explain how it came to be that they collectively received and ignored five  
22 validly delivered notices. Without evidence to support and explain the failure to act,  
23 collectively, the motion to vacate should be denied.

1                   **4. The notice to the CEO of Navient Corporation was effective and**  
2                   **sufficient under the statute as to both it and NS LLC.**

3                   The motion concedes that the debtor's service on the Navient Corporation CEO was  
4                   sufficient for service on Navient Corporation; despite that, it asserts that service must be made  
5                   separately on NS LLC. The debtors dispute this under a plain application of Rule 7004. First,  
6                   as pointed out above, there is plain evidence that "Navient," whatever that term might mean,  
7                   was involved in the administration of these loans, especially as to the collection of payments.  
8                   The current briefing says that NS LLC is the arm of Navient services its loans. Similarly, the  
9                   statements said "Navient;" debtors were directed to make payment to "Navient;" debtors  
10                  received voice mails and phone calls from "Navient;" debtors received text messages from  
11                  "Navient." In none of these instances was there any mention of "Navient Solutions LLC."  
12                  Again, NS LLC is a wholly owned subsidiary of Navient Corporation.

13                  Rule 7004(3) says that service may be had on "a managing or general agent, or to any  
14                  other agent authorized by appointment or by law to receive service of process." Debtors here  
15                  assert that the CEO of Navient Corporation fits within this definition for purposes of  
16                  determining whether service on NS LLC is sufficient. The CEO of Navient Corporation is a  
17                  managing or general agent, by necessity and by law, for NS LLC. It is the principal for NS  
18                  LLC.

19                   **5. The service provided was otherwise sufficient to apprise NS LLC/Navient**  
20                   **of the proceedings and to allow it a fair opportunity to defend.**

21                  The backdrop to any sufficiency of service argument is whether it is constitutionally  
22                  sound under basic principles of due process, whether the notice provided afforded the non-  
23                  responding party a fair opportunity to understand the proceedings and to respond  
24                  appropriately. If the answer to this question is yes, then the court can fairly be said to have

1 personal jurisdiction. In this case, the answer to that inquiry clearly amplifies that provided  
2 above, that this court fairly had jurisdiction over NS LLC/Navient such that it should be bound  
3 by the default judgment.

4 First, as indicated, the court had jurisdiction because NS LLC/Navient filed the claims  
5 within the bankruptcy case, and subjected itself to the jurisdiction of the court. Second, though  
6 the four notices to the P.O. boxes for NS LLC did not comply with the statute, they were  
7 received by NS LLC because 1) they were bona fide P.O. box numbers provided by NS LLC  
8 and they were never returned to debtors and NS LLC submits no evidence indicating, in any  
9 way, that they were not duly received. Third, the fifth notice was sent to the Navient  
10 Corporation CEO at his valid corporate address in Delaware. That notice included and  
11 incorporated the prior notices to NS LLC. Again, this was not returned to debtors, and there  
12 is no evidence anywhere to indicate that it was not duly received by NS LLC/Navient. All of  
13 these notices were designed to and did in fact provide NS LLC/Navient with fair opportunities  
14 to appear in court and defend against the allegations. For reasons that are still unexplained,  
15 both NS LLC and Navient Corporation did not respond. *Cf. In re Frates*, 507 B.R. 298 (9<sup>th</sup>  
16 Cir. BAP 2019)(sufficient service by mail on Wells Fargo CEO, despite failure to serve Wells  
17 Fargo counsel; default against Wells Fargo approved).

18 **6. There is no meritorious defense**

19 NS LLC/Navient has no meritorious defense to this action. It does not refute the fact that  
20 it was engaging in the various collection activities; it does not submit evidence that it was not  
21 paid. Despite the fact that it is the original claimant, it simply takes the position that it is  
22 exempted from this law. This is audacious to be sure, but that does not amount to merit.



1 **C. There was no mistake under 60(b)(1)**

2 **1. The violation need not pertain to a discharged debt.**

3 The motion was filed under subsection (i) which plainly related, additionally, to failure  
4 to credit payments made under a plan. NS LLC/Navient Corporation's attempt to cleverly  
5 read the word "discharge" into the statute -- through the use of brackets -- should be rejected.

6 **2. NS LLC/Navient failed to credit plan payments**

7 NS LLC/Navient's attempt here to disassociate itself from its agent USAF is spurious  
8 and specious. NS LLC filed the claims. NS LLC/Navient is now trying to collect on the debt.  
9 That it instructed the trustee to make payments to another entity does not exempt it from  
10 properly crediting plan payments. Moreover, in making this this argument, NS LLC/Navient  
11 Corporation, even now, does not say it has not been paid. Has it received funds from USAF?

12 **3. NS LLC/Navient Corporation repeatedly violated the statute.**

13 NS LLC/Navient Corporation is delusional when it asserts "the record is barren" of  
14 any violations by it. The documents submitted to the court originally contained a series of  
15 exhibits, all collection notices and letters, from "Navient" to the debtors. NS LLC/Navient  
16 Corporation, in turn, in filing its claims with the court, directed the trustee to make payments  
17 to its agent USAF. Moreover, NS LLC/Navient was the original claimant on the claim forms.  
18 Here, in real time, NS LLC/Navient is asking this court to grant it a categorical exemption  
19 from the statute by its manipulation of the claim form, making USAF the claims agent. NS  
20 LLC/Navient fails to supply any authority for this proposition and it should be rejected here  
21 as absurd.

1           **4.       NS LLC/Navient has since suspended collection efforts.**

2           The “legal impossibility” argument of NS LLC/Navient is undercut by the fact that it  
3 has largely suspended collection efforts on the debtors since it became aware of the judgment  
4 here in April of this year. *Dec. D. Shishido*. If application of the statute were legally  
5 impossible against it, then why was there a suspension of such collection efforts? *Dec. D.*  
6 *Shishido*.

7           **5.       There were no extraordinary circumstances under 60(b)(6); NS**  
8           **LLC/Navient Corp. missed its appeal deadline.**

9           In an attempt to mop up its problem here, the final argument made in the motion is  
10 that “these” circumstances of “legal impossibility” are somehow “extraordinary” under Rule  
11 60(b)(6). NS LLC/Navient thus assert they should be excused from the ordinary 14 day appeal  
12 period. *Mtn. Vacate*, 10, ln.15 and fn. 5. There is no precedent or authority for their novel  
13 “legal impossibility” theories; likewise there are no extraordinary circumstances. Plain and  
14 simple, NS LLC/Navient missed the 14 day deadline multiple times, but most succinctly after  
15 the court entered the contempt order after service on the Navient Corporation CEO. Without  
16 some evidence as to why there was no response at that time, NS LLC/Navient should be bound  
17 by their failure to respond. There is nothing extraordinary about that.

18                           **IV.       CONCLUSION**

19           The motion to vacate should be denied and the order of default and contempt affirmed  
20 as to both NS LLC and Navient Corporation. Notice by mail provided to the Navient CEO  
21 was sufficient to invoke jurisdiction over it and NS LLC. Further, they received collectively  
22 no less than five notices of the proceedings and failed to respond five times. To this day there  
23 is no explanation as to why. The arguments under 60(b)(1) are artificial, contrived of

1 corporate chicanery and in avoidance of basic agency principles. Finally, the failure by NS  
2 LLC/Navient to affirmatively assert that it has not been paid by the debtors, reveals that it  
3 was, and further, that its violations of the statute were willful and deliberate. It's brazen  
4 attempt here to artificially exempt itself from the plain requirement to properly credit debtors  
5 payments should be rejected by this court.

6  
7  
8 Respectfully submitted this 16<sup>th</sup> day of June 2021,  
9

10 /s/ Thomas E. Seguine  
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13 WSBA # 17507  
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## Certificate of Service

I am employed in Skagit County, Washington, State of Washington. I am over the age of 18 and am not a party to the within action; my business address is 1023 South 3<sup>rd</sup> Mount Vernon, WA 98273.

On or about June 16, 2021 I served a copy of this documents on the interested parties in this action, listed below, in one or more of the following manner(s):

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